

Utah Solid and Hazardous Waste Control Board
Utah Department of Environmental Quality, Room 101
168 North 1950 West (Bldg. #2), SLC, Utah
MEETING MINUTES
November 8, 2007
1:00 p.m.

Board Members Present: Carlton Christensen (Chair), John Newman (Vice Chair), Michael Brehm, Scott Bruce, Kory Coleman, Craig Forster, Gary Mossor, Kevin Murray, Craig Anderson, Jeff Coombs, Ryan Dupont, Rick Sprott

Board Members Excused: Dennis Riding

Staff Members Present: Dennis Downs, Dale Marx, Scott Anderson, Tom Ball, Martin Gray, Rusty Lundberg, Allan Moore, John Waldrip, Otis Willoughby, Don Verbica, Rawn Wallgren

Others Present: Angela VanDam, Becky Bryant, Jerry Miller, Walton Levi, Mark Mesesan, Kris Snow, Tim Orton

I. Call to Order

Carlton Christensen (Chair) called the meeting to order at 1:02 p.m. Dennis Riding was excused from the meeting.

II. Approval of Meeting Minutes for the September 13, 2007 Board Meeting (Board Action Item)

Kory Coleman moved to approve the September 13, 2007 Board meeting minutes. The motion was seconded by Craig Anderson and UNANIMOUSLY CARRIED.

III. Underground Storage Tank Update

A. PST Fund Actuarial Report

Dale Marx, sitting in for Brad Johnson, explained to the Board members that the Fiscal Year (FY) 2007 Actuarial Report for the Petroleum Storage Tank Fund has now been received by the Division of Environmental Response and Remediation (Division). The current cash balance of the fund is at approximately 12 million dollars, which is about 1.1 million dollars more than last year. The report also projects that the cash balance for the fund will go negative in 2017, whereas last year's report projected that it would go negative in 2011. This change in time frame was due to the surcharge change in FY2004 and the fact that the Division is continuing to implement cost containment practices.

Kory Coleman inquired about the Gunnison Top-Stop facility that was featured on the news the night prior to the Board meeting. Mr. Marx explained that in August of 2007, a release occurred from an underground storage tank at the Top-Stop facility located in Gunnison, Utah. Due to this release, gasoline vapors started to become present in nearby residences and businesses adjacent to the facility. As soon as the release was reported, Division representatives have been present at the site to oversee the cleanup activities taking place, which is being conducted by Wasatch Environmental, a contractor hired by Top-Stop.

Carlton Christensen then questioned what the long-term plan was for the facility. Mr. Marx stated that Top-Stop had plans to close the facility down even before the release occurred, and that the tanks have currently been removed.

IV. Appointment of Acting Board Executive Secretaries (Board Action Item)

Dennis Downs introduced this issue by explaining that certain authorities are outlined in the state statutes regarding the Executive Secretaries of the Utah Solid and Hazardous Waste Control Board, as well as the Executive Secretaries of the other Boards in UDEQ. In addition, the various Boards have also delegated certain authorities to their Executive Secretaries who also serve as the directors of their respective Divisions within UDEQ.

For the Utah Solid and Hazardous Waste Control Board, Dennis Downs and Brad Johnsons serve as Executive Secretaries representing their respective Divisions' programs. Mr. Downs explained that on occasion, when he is unavailable, issues have arisen where documents, such as letters, permits, permit modifications or enforcement actions need to be signed or approved immediately by the Executive Secretary. Currently, these documents are signed by a branch manager on the behalf of the Executive Secretary. However, there is a concern that a document could be legally challenged, because it was not signed by the Executive Secretary. Therefore, other Boards within UDEQ have designated Acting Executive Secretaries to act in behalf of the Executive Secretary when so designated. Under this scenario, the Executive Secretary gives authorization to an individual who is on record as being duly appointed by the Board to function as the Acting Executive Secretary. The Attorney General's Office has recommended that the Board consider appointing Acting Executive Secretaries to represent each Division in the absence of the Executive Secretary. Mr. Downs recommended that Scott Anderson and Rusty Lundberg be appointed as Acting Executive Secretaries representing the Division of Solid and Hazardous Waste. Brad Johnson recommended that Dale Marx be appointed as the Acting Executive Secretary representing the Division of Environmental Response and Remediation.

It was moved by Kory Coleman and seconded by Gary Mossor and unanimously carried to approve the appointment of "Acting Board Executive Secretaries" representing the Division of Solid and Hazardous Waste and the Division of Environmental Response and Remediation. It was also motioned that Scott Anderson and Rusty Lundberg be appointed as Acting Executive Secretaries when designated by Dennis Downs, and Dale Marx be appointed as the Acting Executive Secretary, when designated by Brad Johnson.

Michael Brehm questioned if it made sense to designate a position in the Divisions as opposed to individuals. Mr. Downs explained that utilization of a specific name is important, as the Board appoints the individuals not just the position.

V. Consideration of Five Year Renewal for: R305-2 Electronic Meeting Rule and R305-3 Emergency Meeting Rule (Board Action Item)

Rusty Lundberg stated that the Attorney General's office has requested that each Board act on this matter. Mr. Lundberg explained that two rules apply to each Division within UDEQ in regards to electronic meetings and emergency meetings. These rules were promulgated under the Open and Public Meetings Act and basically require agencies to have a procedure in place to handling electronic meetings and emergency meetings.

These rules, R305-2 and R305-3, were both originally adopted in November 2002. Consequently, this is the first five-year review. The review is to allow agencies to determine if the rule is still valid and should continue in effect. Because the five-year period expired on November 8, 2007 for both rules, an extension to complete the five-year review has been requested by the Attorney General's Office on behalf of UDEQ.

Mr. Lundberg reviewed the following rules:

Electronic Meetings: Utah Code Annot. §52-4-207 (previously § 52-4-7.8) requires agencies to adopt rules governing electronic meetings before they can hold such meetings. Electronic meetings include those where some board members meet in person, but others, or other meeting participants, participate by telephone. R305-2 was adopted to meet the requirements of this statute.

Staff Recommendation: The Attorney General's Office, on behalf of the Executive Secretary, recommends reauthorization of this rule in order to allow the agency to continue holding electronic meetings. It is also requested that the Board approve a non-substantive change to the rule to update the statutory reference.

Emergency meetings: Utah Code Annot. §52-4-202(5) (previously §52-4-6) allows boards to hold emergency meetings to address urgent issues, provided that certain procedural requirements have been met, such as making best efforts to notify the public and board members. This rule was originally recommended in order to define appropriate best efforts to make these notifications.

Staff Recommendation: UDEQ's advisors from the Attorney General's Office recommend allowing this rule to sunset. The rule imposes additional requirements, not included in the statute, for holding an emergency meeting. Although it is likely that the agency will ordinarily meet all of the requirements of this rule, it is not appropriate to impose additional requirements not included in the statute. In a genuine emergency, the agency should not be hamstrung by requirements that are not imposed by statute.

Board members noted the following two corrections on the Executive Summary submitted to the Board. Because the five-year period expires November 8, ~~2002~~ 2007 for both R305-2 and R305-3, an extension to complete the five-year review has been requested by the Attorney General's Office on behalf of DEQ and subsequently approved by DAR. Additionally, by approving the continuation of ~~R302-2~~, R305-2, the Board is also approving a minor correction to the statutory citations found in Sections R305-2-1 and R305-2-3.

It was moved by John Newman and seconded by Ryan Dupont and unanimously carried to approve the continuation of Rule R305-2, electronic meeting and additionally approve the minor corrections to statutory citations found in Sections R305-2-1 and R305-2-3, and approve the discontinuation (repeal) of emergency meeting Rule R305-3.

VI. Mercury Removal Switch Program Update

Allan Moore provided an informational update on the Mercury Switch Removal Program. R315-17 is a rule which outlines the requirements for the removal and collection of mercury switches from end-of life automobiles. This rule was adopted by the Board on September 14, 2006 and became effective November 1, 2006 with the provisions that the End-of-Life-Vehicle-Solutions (ELVS) Group submit for approval, a management plan for the removal, collection and disposal of mercury switches removed from end-of-life vehicles. A management plan submitted by ELVS was approved on June 27, 2007 with the provision the ELVS develop an amendment to the Plan that provides for reimbursement for the collection of switches that may not be associated with a VIN. This amendment would fulfill the requirements of the rules.

On August 17, 2007 ELVS submitted an amendment to the management plan which included the following two provisions: "Upon verification of properly recorded Vehicle Identification Numbers (VINS), ELVS will authorize a payment of \$5.00 per convenience light switch collected. Convenience light switches that cannot be directly linked to eligible vehicles through a valid VIN will be subject to a "shake test" to determine if the switch is mercury. If the switch is found to be a mercury switch, ELVS will authorize a payment of \$5.00. Switches that contain a steel ball bearing mechanism rather than mercury will not be authorized for a bounty, and orphan switches (ABS G-Force sensors and other switches such as after-market remote starters) not covered under Utah law will be recycled, however no bounty will be paid."

Ryan Dupont asked if a switch does not come from a covered vehicle and is still recycled, but no bounty paid, is there a guarantee that it will be recycled. Mr. Moore stated that the Division's goal is to inspect the auto dismantlers to ensure they are removing the switches and following the rules. However, to date, no inspections have been conducted. Mr. Dupont stated that this is a concern, because the orphan switches may have mercury and may not be disposed of properly. Mr. Moore stated the drawback is that the reimbursement provided by statute is only for convenience light switches. Mr. Dupont asked if there is any way to guarantee these orphan switches are being recycled besides accepting the good will of the contractor. Mr. Moore stated that his staff anticipated inspecting all the facilities to ensure all mercury is being recycled. Mr. Moore further stated that the ELVS Group is required to submitted a report in October 2008, which will indicate how many mercury switches have been submitted for reimbursement, as well as the number that have been recycled.

Michael Brehm asked if the program has now been implemented. Mr. Moore stated the program was implemented on July 1, 2007, and to date, there is no information to indicate how the program is doing, but a yearly report will be submitted in October 2008 to the Division. Mr. Brehm asked if the mercury in the switches will be recycled. Mr. Moore stated that ELVS has not indicated what they are going to do with the mercury, but their priority is to recycle the mercury. Mr. Brehm asked if there is a value for it in today's market. Mr. Moore stated he is not sure, as many questions still need to be addressed regarding the collection and management of mercury.

Dennis Downs stated that the report required to be submitted in October 2008 will be a measurement of how much mercury has been taken out of the environment. Mr. Moore further stated that various other auto dismantlers have called and are interested in the program. Board members asked how many auto dismantlers are now involved and how the Division informs them of these types of issues. Mr. Moore stated there is an auto dismantler's organization and approximately 60 to 70 letters were sent to them. Unfortunately, if an auto dismantler does not have a valid Environmental Protection Agency ID Number, then it becomes difficult to contact them. Additional information regarding auto dismantlers was provided by UDEQ Pollution Prevention Program.

Mr. Brehm asked if it is secure to collect the mercury switches in a three-gallon bucket. Mr. Moore stated that, at this point, the management practices of the auto dismantlers have yet to be evaluated. Carlton Christensen asked if there was any way to evaluate the program now while awaiting the report that is due in October 2008. Mr. Downs stated that as staff begins to inspect the facilities, they can come back and report to the Board the results of the inspections.

VII. Solid Waste Program Update and State Solid Waste Plan Review
This issue will be presented at a future meeting.

VIII. Commercial/Federal Facilities Section

A. Energy Solutions, LLC request for a one-time, site-specific treatment variance for osmium tetroxide waste (Board Action Item)

Otis Willoughby reviewed EnergySolutions August 23, 2007, request for a one-time, site-specific treatment variance from the Utah Hazardous Waste Management Rules.

The mixed waste facility proposes to receive waste containing osmium tetroxide. This waste is listed with the waste code P087. EnergySolutions proposes to receive 25 grams of this waste and grout it in a cement mixture and then isolate the resulting monolith with its macroencapsulation process. The required treatment methods for this waste are either RMETL or RTHRM. Each of these methods is designed to recover the osmium metal for recycling. Due to the radioactive nature of this waste, reuse of the osmium is not possible.

A 30-day public comment period was held from September 4, 2007 to October 4, 2007. A public hearing to receive comment on the variance was held on Thursday, October 2, 2007, at 6:00 p.m. in the Tooele County Court House. No comments were received. The Executive Secretary recommends approval of this variance based on the following findings: The proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the required method would create additional waste, and require waste handling that could possibly expose workers to unnecessary contact with the waste.

Michael Brehm asked if the general public ever attends the public meetings. Mr. Willoughby stated that very rarely does the public attend the meetings. Mr. Willoughby stated the meetings are held open for one hour whether or not anyone attends. Mr. Brehm asked how the meetings are advertised. Mr. Willoughby stated that an "interested parties" mailing list is utilized. Additionally, the notice is published in the newspaper and posted on the Division web page. Dennis Downs stated that these kinds of actions rarely raise the interest of the general public. Jeff Coombs noted that there are so many facilities located in Tooele County and the notices are so frequent, the general public tends to skip over many of the important issues.

It was moved by John Newman and seconded by Gary Mossor and UNANIMOUSLY CARRIED to approve EnergySolutions, LLC request for a one-time, site-specific treatment variance for osmium tetroxide waste. The variance is approved based on the following findings: The proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the required method would create additional waste, and require waste handling that could possibly expose workers to unnecessary contact with the waste.

B. EnergySolutions, LLC request for a one-time, site-specific treatment variance for waste contaminated with lead and PCBs (Board Action Item)

Otis Willoughby reviewed EnergySolutions August 23, 2007, request for a one-time, site-specific treatment variance from the Utah Hazardous Waste Management Rules.

The Mixed Waste Facility proposes to receive waste containing lead contamination (D008), and also containing Polychlorinated Biphenyls (PCBs) as Underlying Hazardous Constituents. Through treatability studies performed at the site, EnergySolutions has confirmed successful treatment below the treatment standards for all contaminants except PCBs. The PCB treatment standard is not attainable using their current chemical treatment technologies. If the waste did not contain the D008 code (contained only PCBs at these levels), then EnergySolutions would be permitted to dispose of the waste without further treatment. EnergySolutions plans to receive 11 cubic feet of this waste.

A 30-day public comment period was held from September 4, 2007 to October 4, 2007. A public hearing to receive comment on the variance was held on Thursday, October 2, 2007, at 6:00 p.m. in the Tooele County Court House. No comments were received. The Executive Secretary recommends approval of this variance based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the required method would create additional waste, and require waste handling that could possibly expose workers to unnecessary contact with the waste.

It was moved by Craig Anderson and seconded by Michael Brehm and UNANIMOUSLY CARRIED to approve EnergySolutions, LLC request for a one-time, site-specific treatment variance for waste contaminated with lead and PCBs.

IX. Chemical Demilitarization Section

A. Stipulation and Consent Order between the Board and Deseret Chemical Depot (DCD) (Board Action Item)

Tom Ball reviewed the proposed Stipulation and Consent Order (SCO) to resolve Notice of Violation (NOV) No. 0611044, which was issued to Deseret Chemical Depot (DCD), the Chemical Agent Munitions Disposal System (CAMDS), and the Tooele Chemical Agent Disposal Facility (TOCDF).

The NOV was issued to the facilities listed above in January of 2007. Both TOCDF and CAMDS are located within the boundaries of DCD. All three facilities have permits and must comply with state and federal laws regarding hazardous waste. One NOV is issued to all three facilities because they all operate under one EPA ID. Number. The NOV contains 64 violations that were documented through self-reports from the facilities and during inspections performed by Division staff. A total penalty of \$108,791.05 has been negotiated and agreed upon for settlement of the NOV. All violations cited in the NOV have been corrected.

A 30-day public comment period was held from September 4, 2007 to October 3, 2007. No comments were received. It is the recommendation of the Executive Secretary that the Board approve this SCO.

It was moved by Jeff Coombs and seconded by Craig Forster and UNANIMOUSLY CARRIED to approve the Proposed Stipulation and Consent Order (SCO) No. 0705015 to resolve Notice of Violation (NOV) no. 0611044, issued to Deseret Chemical Depot, the Chemical Agent Munitions Disposal Systems, and the Tooele Chemical Agent Disposal Facility.

B. TOCDF Update

Marty Gray informed that Board that TOCDF is now processing 155 mm projectiles that are filled with mustard agent. Due to the concerns with mercury contamination from the ton containers, TOCDF was required to sample a number of the projectiles and get the results prior to feeding these projectiles into the furnace. The sampling results indicate there is no problem with mercury contamination associated with the projectiles. Therefore, TOCDF has begun processing the projectiles. The Division will require some follow-up sampling to verify that mercury does not exist. Also, mercury monitoring is currently being conducted on the stack. The projectiles are almost completely solid, so they will not attempt to drain them; instead, TOCDF will feed the full projectiles directly into the metal parts furnace. Problems exist with boiling over, but the furnace is capable of dealing with this matter.

A trail burn will be conducted in January 2008 to see what the emissions look like for processing the projectiles. Currently, there are 55,000 projectiles to process. TOCDF anticipates it will take eight months to complete the campaign.

Also, there are approximately 4,000 ton containers being stored. Because TOCDF does not co-process different munitions, these ton containers will be stored in igloos until the 155mm projectile campaign is complete. Many of the ton containers remaining have “heavy heels” and can not be fed in the metal parts furnace. Two months ago, the Board granted a quantity variance to allow TOCDF to conduct a treatability study on a system to wash the solids out. The treatability study is completed and was very successful. TOCDF expressed appreciation to the Board for allowing the treatability study to be conducted. Once TOCDF begins processing the ton containers, they feel they will have a successful system implemented to utilize for the “heavy heels.”

The Deseret Chemical Depot (DCD) is a BRAC facility, and is currently being realigned to a new mission. One of the missions will be the storage of conventional munitions. The DCD has identified five igloos and is now

starting to bringing conventional munitions from the Tooele Army Depot (North Area) to DCD. Because these igloos are product storage igloos and are not permitted, they are not required to go through a closure process. However, some spills did occur in the igloos, so before any new conventional munitions are placed into the contaminated igloos, the Division will follow up and verify they have been appropriately cleaned up in accordance with applicable rules.

Carlton Christensen asked if conventional munitions storage is going to become a significant part of DCD's future. It was stated that it will eventually take over the installation. Jeff Coombs asked if detonations will also occur at DCD. Walt Levi, DCD representative stated that, at this point, no detonations will occur, only storage.

Michael Brehm asked if this new mission involved new staff, new procedures, etc. or is the existing staff assuming the new duties. Mr. Gray stated that the employees who are working in these igloos are trained according to DCD standards. Mr. Levi added that the employees who are involved in the moving and storage are TOCDF employees and are trained in conventional munitions. Mr. Gray stated the DCD permit does not allow them to destroy anything through open burning/open detonation (OBOD) except in cases of emergency. The DCD permit also states that once they complete the chemical demilitarization of the stockpile, DCD has two months to either submit a closure plan or submit a permit application for the OBOD area. At this time, DCD has not indicated which option they will pursue.

X. Other Business

A. New reimbursement procedures for Board members

Dennis Downs introduced Rawn Wallgren to the Board. Mr. Wallgren is the Administrative Services Coordinator for the Division of Solid and Hazardous Waste. Mr. Wallgren's responsibilities include purchasing responsibilities, employee administrative responsibilities, and accounting responsibilities including preparing the Division's budget.

Mr. Wallgren stated that all current state employees are now required to utilize direct deposit. The State is also now requesting that all temporary employees and Board members begin utilizing direct deposit. What this means is that rather than the Board members receiving a check for any Board related reimbursement, it will automatically be deposited into their bank account. The direct deposit forms were distributed to all Board members to fill out and return to Arlene Lovato. Dennis Downs clarified that although it is not mandatory for Board members to utilize direct deposit at this time, it is anticipated that in the near future it will become a requirement.

B. Division staff photo directory

A request to prepare a Division staff photo directory was recently made by the Board. A photo directory for the Division of Solid and Hazardous Waste has now been created and was distributed to the Board members. Also, an organizational chart of the Division was distributed to the Board. It was mentioned that it would be helpful if the Division of Environmental Response and Remediation could provide this same information.

C. Cancellation of the December 2007 Board meeting

Due to minimal pending Board items, it was determined that the December 13, 2007 Board meeting will be canceled.

D. Misc. Information items

Carlton Christensen stated that, in the past, the Board has conducted Board meetings and tours in various locations throughout the State. However, one area the Board has not visited is the St. George area. The Board was polled and it was determined that Board members will coordinate with Arlene Lovato on their availability to attend January's Board meeting in St. George. It was also discussed that the Board meeting would include a morning tour of a leaking underground storage tank site, the regional sanitary landfill, and a do-it-yourselfer used oil collection center. Also, a recycling coalition has been organized in this area of the State, with public and local governments and the National Parks Service. This recycling coalition will be contacted to determine their availability to give a brief presentation during the Board meeting. Hotel and meeting room logistics will be provided to the Board at a later date. Kory Coleman was also asked to assist as needed in coordinating the tour of the landfill.

XI. Adjourn

The meeting adjourned at 2:02 p.m.